

CCRB INVESTIGATIVE RECOMMENDATION

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|---|--|-------------------------------------|--|------------------------------------|--|
| Investigator: John Guzman | Team: Squad #4 | CCRB Case #: 201906319 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Tue, 07/02/2019 4:30 PM | Location of Incident: [REDACTED] Avenue K | Precinct: 69 | 18 Mo. SOL 01/02/2021 | EO SOL 8/19/2021 | |
| Date/Time CV Reported Wed, 07/17/2019 10:10 PM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Wed, 07/17/2019 10:10 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| 1. [REDACTED] | [REDACTED] | [REDACTED] |
| 2. [REDACTED] | [REDACTED] | [REDACTED] |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------|--------|--------|---------|
| 1. POM Michael Hawk | 01338 | 960645 | 101 DET |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|--------------------|-----------|--------|----------|
| 1. POM [REDACTED] | 14960 | 957611 | 069 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A . POM Michael Hawk | Force: Police Officer Michael Hawk used physical force against [REDACTED] | A . Substantiated |

Case Summary

On July 17, 2019, [REDACTED] [REDACTED] contacted the CCRB via on-line website and filed this complaint.

On July 2, 2019, at approximately 4:30 p.m., [REDACTED]-year-old [REDACTED] [REDACTED] and his [REDACTED]-year-old friend, [REDACTED] [REDACTED] were sitting on a bench in front of P.S. 276, located at the corner of East 83rd Street and Avenue K in Brooklyn. PO Michael Hawk and PO [REDACTED] [REDACTED] from the 69th Precinct, drove up towards the bench in an unmarked car. PO Hawk forcibly brought Mr. [REDACTED] to the ground and handcuffed him (**Allegation A: Force, substantiated**).

Mr. [REDACTED] and Mr. [REDACTED] were removed to the 69th Precinct stationhouse. Mr. [REDACTED] and Mr. [REDACTED] were released with summonses for unlawful [REDACTED] of marijuana (BR 08). Mr. [REDACTED] was treated by EMS while at the stationhouse and was removed to Brookdale Hospital Medical Center. Mr. [REDACTED] sustained multiple serious injuries which are discussed below in greater detail.

There are seven body-worn camera recordings of this incident. The NYPD refused to provide all but one of the recordings because Mr. [REDACTED] who is a minor and was uncooperative with the investigation, did not sign an unsealing order (BR 01). The body-worn camera recording that was provided to the investigation begins after Mr. [REDACTED] is handcuffed.

This case was mentioned during the September 12, 2019 CCRB Board Meeting.

Findings and Recommendations

Allegation (A) Force: Police Officer Michael Hawk used physical force against [REDACTED]

It is undisputed that PO Hawk forcibly took Mr. [REDACTED] to the ground.

Mr. [REDACTED] (BR 02) stated that he and Mr. [REDACTED] sat and socialized on a bench in front of P.S. 276. Neither Mr. [REDACTED] nor Mr. [REDACTED] smoked marijuana. Neither Mr. [REDACTED] nor Mr. [REDACTED] were in [REDACTED] of marijuana. Approximately 10 minutes later, PO Hawk and PO [REDACTED] drove towards the bench in an unmarked black sedan. Mr. [REDACTED] stood up and ran. Mr. [REDACTED] also stood up but did not run. PO Hawk wrapped his arms around Mr. [REDACTED] waist, lifted him up, and slammed him down to the ground. Mr. [REDACTED] did not remember in detail how he was slammed to the ground because it happened very fast. Mr. [REDACTED] forehead touched the ground first. Mr. [REDACTED] left leg turned underneath him, and he fell on the left side of his body. PO Hawk put his body weight on Mr. [REDACTED] while Mr. [REDACTED] lay on the ground. Mr. [REDACTED] was turned onto his stomach, but he did not know how this occurred. PO Hawk placed Mr. [REDACTED] hands behind his back and handcuffed him. PO Hawk then lifted Mr. [REDACTED] off the ground and placed him in the unmarked car. Mr. [REDACTED] was transported to the 69th Precinct stationhouse. Mr. [REDACTED] was offered medical attention at the stationhouse. EMS arrived and removed Mr. [REDACTED] to Brookdale Hospital Medical Center.

Mr. [REDACTED] medical records (BR 04) from Brookdale Hospital Medical Center document that Mr. [REDACTED] sustained abrasions in his right elbow, a laceration on his left foot, an abrasion on his right shoulder, a laceration on the right side of his head, an abrasion to his left knee, an abrasion on his upper forehead, frontal and temporal gyri contusions (brain-bruise), impaired Activities of Daily Living (ADL), gait disorder, functional decline/impaired functional skills, intracranial hemorrhage (brain-bleed), open displaced fracture of first, second, and third metatarsal (foot bones) of the left foot, left foot fracture, foot pain, acute non-intractable headache, subdural hematoma, subarachnoid hemorrhage (brain-bleed), assault, trauma, paraspinal pain on left side of neck, open reduction internal fixation (ORIF) surgery on foot, word-finding difficulty, hematoma on his forehead, laceration to his left foot, and was at a fall/seizure risk with no prior medical history indicating risk of seizure. Mr. [REDACTED] remained in the hospital for six days.

The investigation obtained photographs of Mr. [REDACTED] injuries (BR 03).

Mr. [REDACTED] (BR 05) provided a brief phone statement to the investigation and was uncooperative thereafter. Mr. [REDACTED] stated that he was with Mr. [REDACTED] sitting on a bench. Mr. [REDACTED] looked back and noticed someone exiting a black car. Mr. [REDACTED] told Mr. [REDACTED] "Let's go. We're

out.” Mr. [REDACTED] ran on Avenue K. Mr. [REDACTED] ran “a little bit.” Mr. [REDACTED] noticed that the car had police lights and he stopped running. Mr. [REDACTED] returned to the incident location and saw Mr. [REDACTED] on the ground, unable to walk, and with scratches on his face. Mr. [REDACTED] did not see what occurred with Mr. [REDACTED].

As noted above, the NYPD provided only one body-worn camera recording, which begins after Mr. [REDACTED] is in handcuffs. The NYPD refused to provide the remaining six body-worn camera recordings related to this incident because Mr. [REDACTED] who is a minor and was uncooperative with the investigation, did not sign an unsealing order.

PO Hawk (BR 06) stated that he and PO [REDACTED] were conducting anticrime patrol in an unmarked car in the vicinity of East 83rd Street, between Avenue J and Avenue K. Approximately one week before the incident, a confidential informant told PO Hawk and PO [REDACTED] that a male was selling drugs at the corner of Avenue L and East 83rd Street, and that he carried a firearm. PO Hawk was not provided with a description of the male. The area is also known for kids smoking marijuana. PO Hawk and PO [REDACTED] were travelling with the windows down on East 83rd Street, in the direction of Avenue L. PO Hawk saw Mr. [REDACTED] and Mr. [REDACTED] sitting on a bench approximately fifteen feet away and smoking a marijuana cigarette. PO Hawk determined that they were smoking marijuana because he smelled a strong odor of marijuana coming from Mr. [REDACTED] and Mr. [REDACTED] direction. PO Hawk and PO [REDACTED] decided to approach Mr. [REDACTED] and Mr. [REDACTED] retrieve their identification, check if they had any warrants, and then possibly issue them summons or use their discretion and let them go. PO Hawk did not suspect that either male was the individual referenced by the confidential informant.

PO Hawk and PO [REDACTED] pulled up approximately five feet away from Mr. [REDACTED] and Mr. [REDACTED]. PO Hawk exited the vehicle and said, “Police, stop. Do not move.” Mr. [REDACTED] and Mr. [REDACTED] saw PO Hawk and ran. PO Hawk ordered Mr. [REDACTED] and Mr. [REDACTED] to stop, but they did not comply. PO [REDACTED] pursued Mr. [REDACTED] in the unmarked car because Mr. [REDACTED] ran faster. PO Hawk ran after Mr. [REDACTED] and caught up with Mr. [REDACTED] at the corner of East 83rd Street and Avenue K. PO Hawk wrapped his arms around Mr. [REDACTED] torso from behind. Mr. [REDACTED] resisted by pulling and pushing away from PO Hawk’s chest. PO Hawk told Mr. [REDACTED] to stop resisting, but he did not comply. PO Hawk then lifted Mr. [REDACTED] off the ground and forcibly brought Mr. [REDACTED] to the ground. Mr. [REDACTED] landed on to his left side and then turned onto his stomach. PO Hawk landed on his left knee. PO Hawk then straddled Mr. [REDACTED] and grabbed and handcuffed one of Mr. [REDACTED] wrists. Mr. [REDACTED] resisted by clutching his loose hand underneath his body and refusing to place it behind his back. Approximately 30 seconds later, PO Hawk got ahold of Mr. [REDACTED] loose hand, placed it behind Mr. [REDACTED] back, and handcuffed it. PO Hawk denied using any other force against [REDACTED].

PO Hawk lifted Mr. [REDACTED] off the ground after handcuffing him. PO Hawk observed scrapes and cuts to Mr. [REDACTED] head, hand, and leg. Mr. [REDACTED] bled from these injuries. Mr. [REDACTED] sustained his injuries due to the fall to the ground and from wrestling with PO Hawk on the ground. Mr. [REDACTED] also said he was hurt and limped on his left or right foot. PO Hawk did not call an ambulance to the location because Mr. [REDACTED] was coherent and was not severely injured nor required immediate medical attention. PO Hawk planned on calling an ambulance at the stationhouse.

Mr. [REDACTED] was also apprehended, but PO Hawk did not know how this occurred. PO Hawk recovered a marijuana cigarette in the location where he initially observed Mr. [REDACTED] and Mr. [REDACTED] smoking. Both Mr. [REDACTED] and Mr. [REDACTED] were removed to the stationhouse. An ambulance arrived at the stationhouse approximately 20 minutes later. The EMTs cleaned Mr. [REDACTED] wounds and checked his left or right foot. Mr. [REDACTED] removed his sock and PO Hawk noticed a cut on his foot. PO [REDACTED] wrote Mr. [REDACTED] and Mr. [REDACTED] summonses for unlawful [REDACTED] of marijuana while EMTs evaluated Mr. [REDACTED]. Mr. [REDACTED] was then released into the custody of the EMTs. PO Hawk reviewed the TRI report he prepared for Mr. [REDACTED] and all the enclosed photographs. PO Hawk acknowledged taking the photographs. When asked why he did not take a

photograph of Mr. [REDACTED] foot injury, PO Hawk responded, "I have no idea."

The TRI prepared by PO Hawk (BR 07) documents that Mr. [REDACTED] resisted and used force against PO Hawk by wrestling/grappling and pushing/shoving. PO Hawk used a forcible take down against Mr. [REDACTED] in defense of self, to overcome resistance and aggression, and because Mr. [REDACTED] was a fleeing suspect. Both PO Hawk and Mr. [REDACTED] were injured. Mr. [REDACTED] sustained minor lacerations/abrasions sustained by unintentional action(s) by PO Hawk. The photographs attached to the TRI depict blood on Mr. [REDACTED] tank top, a cut on his right hand, and a scrape on his right shoulder. PO Hawk sustained minor swelling and complained of substantial pain. The photograph attached to the TRI depicts a minor cut on PO Hawk's right wrist.

PO [REDACTED] (BR 08) stated that he was informed by Sgt. [REDACTED] via cell phone that there were two kids sitting on the bench on the incident location and smoking marijuana. PO [REDACTED] and PO Hawk drove to the incident location and double-parked approximately one car length away from the curb. PO [REDACTED] observed Mr. [REDACTED] and Mr. [REDACTED] on a bench passing what appeared to be a marijuana cigarette between each other. PO [REDACTED] testified to smelling an odor of burnt marijuana. PO [REDACTED] wanted to talk to Mr. [REDACTED] and Mr. [REDACTED] and see what was going on. PO [REDACTED] did not intend to issue them summonses. PO [REDACTED] and PO Hawk exited unmarked car. Mr. [REDACTED] and Mr. [REDACTED] ran. PO [REDACTED] pursued Mr. [REDACTED] via the unmarked car because Mr. [REDACTED] ran faster. PO Hawk ran after Mr. [REDACTED] PO [REDACTED] did not witness any physical altercation between PO Hawk and Mr. [REDACTED] Upon apprehending Mr. [REDACTED] PO [REDACTED] returned to PO Hawk's location and Mr. [REDACTED] was already in handcuffs.

The Medical Treatment of Prisoner Report (BR 09) prepared by PO [REDACTED] notes that Mr. [REDACTED] had a minor lump close to his eye.

Summonses (BR 10) (BR 11) were issued to Mr. [REDACTED] and Mr. [REDACTED] for unlawful [REDACTED] of marijuana.

Marijuana in a cigarette wrapper was vouchered as arrest evidence for Mr. [REDACTED] and Mr. [REDACTED] The marijuana was field tested and yielded positive results (BR 12 and BR 13).

Patrol Guide Procedure 221-01 (BR 14) officers may use force when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. Patrol Guide Procedure 221-01 further states that usage of force must take into account the following factors in order to determine whether the force was reasonable: the nature and severity of the crime/circumstances, actions taken by the subject, duration of the action, immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, and the size, age, and condition of the subject in comparison to the MOS.

PO Hawk and PO [REDACTED] suspected Mr. [REDACTED] and [REDACTED] of unlawful [REDACTED] of marijuana and intended to stop them, check if they had any warrants, and either issue them summonses or use discretion and let them go. Because the NYPD refused to provide the CCRB with the body-worn camera recordings of this incident, the investigation was unable to determine whether Mr. [REDACTED] fled from PO Hawk or resisted custody. However, it is undisputed that PO Hawk ran up to Mr. [REDACTED] wrapped his arms around Mr. [REDACTED] lifted him off the ground, and forcibly placed him against the ground. Once on the ground, Mr. [REDACTED] allegedly pulled and placed his hand by his waist as PO Hawk tried to handcuff him.

At the time of the incident, PO Hawk was 5'11" tall and 220 pounds while Mr. [REDACTED] was 5'9" tall and 158 pounds. Mr. [REDACTED] was significantly smaller than PO Hawk, Mr. [REDACTED] was not suspected of being armed or dangerous, and the violation he was suspected of was not serious or violent in nature. PO Hawk lifted Mr. [REDACTED] off the ground and forcibly took him to the ground with such force that resulted in significant, life-altering injuries requiring surgery. The inherent danger posed by PO Hawk's use of force far outweighed the danger posed by Mr. [REDACTED] resistance. Taking the above factors into account and given the totality of the circumstances, PO

Hawk's use of physical force was unreasonable. Therefore, it is recommended that **Allegation A** be closed as **substantiated**.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which [REDACTED] [REDACTED] has been a party (BR 15).
- PO Michael Hawk has been a member-of-service for three years and has been named a subject in 6 CCRB cases and 24 allegations, none of which have been substantiated. PO Hawk's CCRB history does not reflect any patterns pertinent to this investigation.
 - Case no. 201902826 involves allegations of abuse of authority and other misconduct. The case is pending investigation.
 - Case no. 201902964 involves allegations of abuse of authority and other misconduct. The case is pending investigation.

Mediation, Civil and Criminal Histories

- The complaint was not suitable for mediation.
- [REDACTED] [REDACTED] filed a Notice of Claim with the City of New York claiming severe and permanent personal injuries including injuries to the head, brain injury, a subdural hematoma, an intracranial hemorrhage, trauma, multiple facial lacerations, left eye injury, multiple lacerations to his hand, arms, and legs, and multiple foot fractures; required surgical intervention; significant limitations in use of body parts; required emergency care and attention requiring medical care and attention in the future; required physical therapy; possible pain injections; possible diagnostic MRI and EMG/NCV testing; inability to perform substantially all activities of daily living, and permanent damage. Mr. [REDACTED] is seeking \$5,000,000 as redress (BR 16).
- According to the Office of Court Administration (OCA), [REDACTED] [REDACTED] has no history of convictions in New York City (BR 17).

Squad No.: 4

Investigator: _____

Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____

| | | |
|-----------|--------------------|------|
| Signature | Print Title & Name | Date |
|-----------|--------------------|------|

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____